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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
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PATRICIA HENLEY,
Plaintiff,
vs. No. 995 172
PHILIP MORRIS, et al.,
Defendants.
_____/

DEPOSITION OF
DR. JAMES MISSETT

_____
Tuesday, December 15, 1998

REPORTED BY: MARK W. BANTA, CSR #6034

TOOKER & ANTZ
COURT REPORTING & VIDEO SERVICES
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San Francisco, California 94103

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BE IT REMEMBERED that on Tuesday, December 15, 1998, commencing at 9:20 a.m., at the Law Offices of Wartnick, Chaber, Harowitz, Smith & Tigerman, 101 California Street, Suite 2200, San Francisco, California, before me, MARK W. BANTA, Certified Shorthand Reporter 6034 for the State of California, personally appeared

JAMES MISSETT, M.D.,

called as a witness, who having been first duly sworn, was examined and interrogated as hereinafter set forth.

A P P E A R A N C E S

WARTNICK, CHABER, HAROWITZ, SMITH & TIGERMAN, 101 California Street, Suite 2200, San Francisco, California 94111-5802, represented by MADELYN J. CHABER, Attorney at Law, appeared as counsel on behalf of the Plaintiff.

SHOOK, HARDY & BACON, LLP, One Market Plaza, Steuart Tower, Ninth Floor, San Francisco, California 94105-1310, represented by GERALD BARRON, Attorney at Law, appeared as counsel on behalf of the Defendant Philip Morris and Lorillard Tobacco Company.

SHOOK, HARDY & BACON, LLP, One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105-2118, represented by WILLIAM S. OHLEMEYER, Attorney at Law, appeared as counsel on behalf of the Defendant Philip Morris and Lorillard Tobacco Company.

ALSO PRESENT: JANE ASCHEMAN.

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EXAMINATION BY MS. CHABER

MS. CHABER: Q. Would you state your full name for the record, please.

A. James Missett, M-I-S-S-E-T-T.

Q. And could you give us your address, please?

A. DELETED.

Q. We're in my office taking your deposition in the case of Patricia Henley. You've familiarized yourself with that case?

A. Yes.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. On how many occasions?

A. Five or six hundred.

Q. And over what time period?

A. About 20 years.

Q. And have you ever testified in court before?

A. Yes.

Q. How many times?

A. About a thousand times.

Q. Is that over the same 20-year time period?

A. That's about 25 years.

Q. And we've taken this time in copying some materials you've provided. When you get them back I might ask you more specifically about things, one of them includes

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your CV.

First of all, if you don't understand any of my questions, you will ask me to rephrase them?

A. I will.

Q. And you understand you are under oath?

A. I do.

Q. Can you give me a rough outline of your

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experience?
A. In terms of?
Q. In terms of the expertise you are bringing and what you have been asked to do in this case.
MR. BARRON: Well, that's compound. Maybe you could assist him by just breaking it down. What is his background and what he's been asked to do.
MS. CHABER: Q. Dr. Missett, you have been disclosed as an expert in the Patricia Henley case.
A. I understand.
Q. And what is it you have been asked to do in that case?
A. I have been asked to review videotapes and transcripts of Mrs. Henley's deposition and a variety of articles or reports and consult with the attorneys from Shook, Hardy & Bacon with respect to my opinion regarding Patricia Henley or certain aspects of her presentation.
Q. And what aspects have you been asked to comment

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upon?
A. The history of her smoking; the various influences that would appear to have come to bear on her in starting to smoke and continuing to smoke; indications as to the level of intelligence that she had in general; the level of awareness that she would appear to have been able to have as to benefits and risks from smoking; the response that she had to this kind of awareness at various points in time with respect to various areas in her life, including but not confined to smoking; the ways in which other areas of her life and her behavior and her response to those areas may have been reflected in her smoking behavior, which would include her starting to smoke, continuing to smoke, and then stopping smoking; the indications of the degree of control that she appeared to have over various areas of her life, including but, again, not restricted to smoking at various points in time, to the extent that this could be determined; and the question of whether she appeared to be dependent on cigarette smoking or addicted to cigarette smoking; the issue of what would constitute dependence, what would constitute addiction; what the bases might be for any opinions that I gave.
Q. And what is your definition of dependence?
A. Well, if we're talking about dependence with respect to dependence on substances, it is a term that's

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used to define an individual using usually a substance that they can develop a tolerance to; from which they can experience withdrawal; where they devote a significant portion of their time to securing or using the substance; where there are indications that the person gives up other areas of his or her life which might be otherwise pleasurable or worthwhile or productive for him or her in order to pursue this activity; where the individual continues the practice over a substantial period of time and either uses more of the substance or continues it for a longer period of time than they might otherwise have intended; where there are indications to a desire to stop, perhaps repeated efforts to stop, but the individual being unsuccessful in doing so. At least a -- the more of those that you get, the more that you would expect an individual to be of the opinion that the person using the substance is dependent on that substance.
Q. Do you believe that individuals can be dependent

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on cigarette smoking?
A. Yes.
Q. Do you require each of the items that you enumerated under your definition of dependence in order to consider someone dependent on a substance?
A. Well, it depends on what kind of substance it is that you're talking about.

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If you're going to talk about -- the question that you had asked me earlier had to do with a general definition of substance dependence. If you're going to be talking, again, about substances in general, without becoming specific about any given one, you would look usually for signs of tolerance, withdrawal, at least those and then a couple of the others. The kinds of things about which I was looking at Mrs. Henley are -- have a changed definition from the one I gave you with regards to substances in general. So if you ask me about substances in general, I'll tell you about substances in general.
Q. What substances do you believe individuals can be dependent upon?
MR. BARRON: Well, I'm going to object to the question as ambiguous or potentially calling for a narrative. If you're looking for just some examples or general categories, then I think it's appropriate. But we ought to make clear that that's what he's going to be doing, rather than listing every potential substance he could think of.
MS. CHABER: Q. Doctor, I would like a list of the substances that you believe an individual can become dependent upon.
MR. BARRON: Same objection. Same bases.
THE WITNESS: Well, I think the problem with a

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list is that ordinarily lists are expected to be exhaustive, and if I were to give you a list I would -- I would need access to more information than I'm able to bring in here. But I can certainly give you -- give you an accounting of some. I can give you the ones that are most commonly referred to.
But if you wanted to get into the other material beyond that, I would have to look at some things before I answered it.
MS. CHABER: Q. I would like you to give me a list of those substances that you can think of as you sit here in this room that individuals can be dependent upon. And I understand you may miss something that on another day you might have added to that list. Right now I'm asking for the list of substances that you believe individuals can be dependent upon.
A. Okay. So long as you're asking me what it is right now without looking at anything and without having to go into, you know, the permutations of these different kinds of substances.
Alcohol, cocaine, amphetamine and methamphetamine and its various permutations that usually come under the heading of stimulants; barbiturates; benzodiazepines; opiates.
Q. Is that like Valium, substances like that?

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A. Valium would be a benzodiazepine, yes.
Q. Okay.
A. Opiates, whether naturally occurring or

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semi-synthetic or synthetic; PCP. If I -- if I leave out some aspects of the criteria, LSD. Again, if I leave out some aspects of the criteria, those would generally fall under the heading of hallucinogens.

Q. So you would add mescaline or other types of --

A. Mescaline and peyote would be regarded as being less powerful, but I think it's perhaps theoretically possible that an individual would be dependent on mescaline or peyote, although I've never really seen it.

There's a number of anesthetics. Generally, they're going to fall -- all of these medications would fall under the heading of controlled substances, essentially. But there's a substantial number of anesthetics which have that potential to have an independent -- an individual become dependent on them.

Q. Okay. And how do you define -- is that the end of the list?

A. No.

Q. Okay. That's fine.

A. We're not yet to nicotine. And you had asked me to start with that I believe an individual could become dependent on cigarettes or something, cigarette smoking or

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something connected with that, and the answer would be yes.

Q. And is it specifically the nicotine?

A. I don't think that's clear. I think it is -- I think it's much safer to say that the dependence is on cigarette smoking, and nicotine would certainly be a major element in that, but whether it is the specific element, I don't think that that's really clear yet.

You can also have individuals develop a dependence on caffeine.

At least as I sit here, I think I've probably --

Q. It's not a trick question.

A. -- gone as about as far as I can go. No, I've gone about as far as I can go right now.

Q. How do you define addiction?

A. As an extreme form of dependence where the -- whatever the other elements involved in dependence are with respect to the individual you're going to describe is addicted, that person would have a markedly more difficult time refraining from the use of the substance; would have a much more difficult time decreasing his or her use of the substance; would have a significantly more troublesome time stopping or ceasing use of the substance; and that you would have more -- without giving you what the number is, whether it's five or six or seven, the criteria that you would have for dependence, more clearly evident in this person's case

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and evident to a marked or obvious degree.

Q. And are there substances which are not on your list of dependence, substances upon which one can be dependent, that you include a list of substances that may be addictive?

A. Substances that are addictive but don't cause dependence? Is that -- I just want to be clear if that's what you're asking.

Q. There's a list of which you gave me of substances upon which someone can be dependent. If I understood you correctly, addiction is a greater level of dependence than you've described previously.

A. It would be an extreme form of dependence, yes.

Q. I'm asking you if there are any substances that

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you would include on your addiction list that did not come up on your dependence list.

A. Well, insofar as I gave you all the ones I could think of off the top of my head right here, and I'm looking at addiction as an extreme form of dependence, you wouldn't expect that there would be.

Q. You never know.

A. No, that's true.

Q. Now, what is it in your background and experience that you believe you bring to the expert opinions you've been asked to render in this case?

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A. Well, I think aside from the normal kind of exposure that a medical student would have or an intern in medicine to drug abuse problems, which is -- it's more than what the population gets but it's not by itself a tremendous amount, I was for two years the special assistant to the administrator of the Health Services and Mental Health Administration which at that point in time included the National Institute of Mental Health and the National Institute on Alcohol Abuse and Alcoholism. And I was -- in that office, I was the liaison to the -- what was really then a White House Office of Drug Abuse Policy, but the chief role was basically reading documents, summarizing documents, writing memos on documents for the administrator. And that was from 1971 to 1973.

And starting in about 1975, I began a six-year stint of working one 16-hour shift a week at the Santa Clara Valley Medical Center as first the admitting psychiatrist and then the supervising psychiatrist. On an average night I would evaluate 15 individuals. And again, on an average night, two-thirds of them were intoxicated with some substance or combination of substances.

And during the same period of time for an 18-month period in 1975 and '76 I worked another 16-hour shift a week at the Park Alameda Alcohol Hospital where I'd evaluate on an average night 50 people who were acutely intoxicated with

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alcohol and generally be responsible for keeping them alive and slowly detoxifying over the course of the evening until 8:00 o'clock the next morning.

In 1977 I started a two-year stint as a non-voting member of the Council on Research and Development for the American Psychiatric Association which had the charge of functioning as the final common pathway for the task forces that were developing DSM-III. And in the course of that period of time, I did essentially what the other members did in terms of reading the task force reports and writing comments on them and then participating in the discussion, but I had no vote. I was essentially I think functioning as a staff member, except I sat at the table instead of against the wall.

Then in between 1975 and 1978 I worked as a consultant to the Adult Probation Department for Santa Clara County where I'd evaluate on the average one, maybe two individuals a week who had either been convicted of or pled guilty to some criminal offense or other and where there was a history of some kind of psychiatric or substance abuse problem. I would write what was usually a sentencing evaluation for the court.

Starting in 1978 I went on the panel of psychiatrists that Santa Clara County had. At the time there were only 10 of us, and again, at the time, for the

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next four years I did an average of about four evaluations a week of the kind that the courts would ordinarily ask psychiatrists to make. During that period of time, five or six hundred of those evaluations were of individuals who had a petition under a Welfare and Institutions Code for being found by the court to be addicted to a substance or being in imminent danger of being addicted to a substance with usually the hope on their part that they could get admission to a California rehabilitation center for treatment as part of the sentence that was going to be imposed.

I also for three years taught the course in drug and alcohol abuse to Stanford undergraduates for one year and over a three-year period of time to the medical interns and residents at Stanford Hospital in the late 1970s, early 1980s.

I've evaluated about 4,000 individuals who had criminal charges lodged against them. About 3,000 of those, even though I'm doing the evaluation almost all the time a significantly long period of time after the events, were intoxicated with something at the time they got involved in whatever kind of behavior it was that got them into trouble.

I've treated people who have had, well, any number of substance abuse problems. Usually, it's been rarely less than one per year, rarely more than two or three per year. And that's been relatively constant but declining from the

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time I started. In other words, I saw more, maybe it was three or four a year when I first started and it is down to one or two per year now.

Q. What year did that start?

A. 1978 is when I started private practice.

I also have my boards in addiction psychiatry.

Q. And when did you get those?

A. This year.

Q. And what do you need to do in order to get your boards in addiction psychiatry?

A. Well, I think that the proper term would be I'm board certified in psychiatry with special qualifications in addiction psychiatry. And the qualifications as I remember them were that a substantial portion -- and I can't tell you what that is in terms of the percentage, but there is a percentage of the practice be devoted to either treating, evaluating or teaching about substance abuse problems.

Q. Did you have to take any kind of examination?

A. Yes.

Q. And how long an examination was that?

A. Three hours.

Q. And was that your first time taking it?

A. Yes.

Q. And I assume you passed?

A. I did.

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Q. I didn't mean to cut you off in terms of the things you were telling me about that you brought to bear on your opinions in this case when I stopped to ask you what year you were doing something in. Are you in essence finished reciting that for me?

A. I think that was it. I can't think of anything else right now.

Q. Okay. Can you tell me what your present employment consists of?

A. I'm in private practice in Menlo Park. I have

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about 100 active patients. I do forensic work, which would be evaluations in criminal and civil cases. I am the west coast consultant for the United States Secret Service. I am starting my third stint as deputy chief of the psychiatry service at Stanford Hospital. I'm on the clinical faculty at the Stanford School of Medicine. I can't think of anything else.

Q. What percentage of your time do you spend in private practice?

A. You mean in terms of seeing patients, as such?

Q. Well, you defined for me a list of things for which you are now actively involved in your employment, the first of which was your private practice, where I think you said you had 100 active patients?

A. Right.

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Q. What percentage of your time does that represent?

A. It probably would be easiest to give it to you in terms of hours, since I think that probably would be more accurate to you than in terms of percentages, then if you want to go back and redo it, that's fine.

In terms of the number of hours per week, a low week with regards to seeing patients would be never less than 15 or 20. It would be rare that I would see more than 30 patients a week right now.

The Secret Service takes on the average between five and ten hours a week.

The clinical faculty work at Stanford takes three or four hours a week.

The deputy chief job takes on the average of probably three or four hours a week, again.

The forensic work would occupy the rest of the time. On an average, I work about 80 hours a week, sometimes as much as 100, sometimes as little as 60.

Q. So the forensic averages somewhere between 30 and 50 hours a week, if I'm adding this all up correctly?

A. I think that's about accurate, because the -- if I had given you a percentage on it, I would have given you a percentage between 50 and 60 percent.

Q. Let's talk about the easier ones first. If I ask you about the Secret Service job, do you have to kill me

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after I get the answer? It's a joke.

A. No, that doesn't say what they'll do to me. They won't do anything to you.

MR. BARRON: And you don't have to get into areas that they've asked you not to get into, either. But you need to indicate that you're doing that.

MS. CHABER: Q. Can you give me an idea what you do as a consultant for the Secret Service?

A. Sure. I do evaluations of either individuals or cases where people have made threats or felt to have made threats against either the President or the Vice President or members of their family, families, or heads of foreign governments. And I'll either interview the individuals or I'll review their case files and I will write what is essentially a psychiatric report from whatever it is you can tell from that material.

I'll give -- I give courses four times a year at what are called protective research briefings in Washington. The courses have thus far been on diagnosis and evaluation and the mental health system and how the agents can interact with it. They run through an average of 25

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agents per class. The class for them lasts a week. My part lasts sometimes a day, more frequently a half a day, depending on whether I'm just teaching my own class or somebody else's.

I also am supposed to go once a quarter to a different office on the west coast, and that's anywhere between Tucson and Anchorage and between Reno and Guam, and basically meet with the people there, do something of psychiatric significance that's of relevance to the Secret Service.

Q. And as deputy chief at Stanford, what do you do?

A. Well, the person who is second in the department at the hospital and the medical school is from the clinical faculty rather than from the full-time faculty, and it's an elected position that basically involves administrative work. And the administrative work has to do with sitting on the medical board for the hospital; sitting on the board of deputy chiefs, which has to do with those kinds of issues going on in the hospital or their departments which affect individuals who are in the private practice of medicine somewhere around Stanford; and being available to do whatever the chairman wants you to do if the chairman decides he wants you to do anything.

Q. And who is the chairman at this point?

A. Alan Schatzberg.

Q. And how long have you had that position?

A. Well, I had it twice in the 1980s, and I'm starting again now. I don't know whether I've started already or not. I know that the person who preceded me had

her last official function last month, but I don't know whether that means I'm now doing it or she's still doing it and -- but I do know it's certainly as of January 1st.

Q. And what do you do on the clinical faculty?

A. I teach and supervise medical students and psychiatric residents. And I think I've given a grand rounds there maybe three times in the past three or four years.

Q. And is there any particular subject you teach? Or is the teaching part and parcel of the ongoing practice that the hospital is engaged in?

A. I usually brought in a smorgasbord, and I let the students or the residents pick. I can supervise a case for them. I can spend the time going over interviewing skills in terms of how to conduct an interview so that you get the kind of information you want without putting yourself in the picture or letting your biases interfere with what it is you're looking for; the history of psychiatry, forensic psychiatry; malpractice; diagnosis, although diagnosis is less. They get more of that from the others, so I think all of the people who have asked for it, that's probably one of the least requested.

Q. And is your private practice limited to people with dependent or substance abuse problems? Or is it a varied practice?

A. It's a general practice of psychiatry.

Q. And do you have a particular focus in psychiatry that you use?

A. No, I don't think so.

Q. You're not a gestaltist or -- throw around some --

A. No.

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Q. -- Jungian or --
A. No.
Q. Psychoanalytical behaviorist?
A. No. That doesn't mean I wouldn't suggest things to people that may be behaviorally based or something like that, but I am not a member of any of the schools.
Q. How would you describe your psychiatric philosophy with respect to private patients?
MR. BARRON: Objection. Calls for a narrative.
THE WITNESS: I think it varies a bit, depending on the person and the situation that they come in with.
There's a portion, perhaps 25 percent of the people that I see, where I would basically characterize it as a supportive and medication management.
I think there's another 25 percent that I would say is more insight oriented; in other words, what's going on inside them and how did they get to where they are and how do they decide on the basis of this where it is they want to go. And that's either with or without medication.

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I think on the average, again, at any one time there's perhaps 10 to 15 percent or so that are -- their response is more behavioral in terms of what is it they're doing and what's going on with them when engaging in behavior, how do they change it or alter it or in some ways do other things about it.
There's another proportion, maybe another 10 percent or so, that are really a combination of insight and behavior.
There's maybe 25 percent or so that are -- I would say are in supportive and insight at the same time. It's like whatever insights are given are more gently given. I don't know how -- what I'm up to there, but I think I've exhausted most of the kinds of things I do in the ordinary week or series of weeks.
MS. CHABER: Q. Okay. And with respect to your forensic practice that I think you indicated was probably somewhere between 50 and 60 percent of your time --
A. Yes.
Q. -- you have been doing that how long?
A. Since 1975.
Q. And what percentage of your forensic work is in criminal versus civil?
A. It's been decreasing in criminal from pretty much the day I started, certainly the late 1970s. At the present

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time, in terms of individuals that I would see, it's probably about half. But in terms of the time that's spent on the individuals, 40 percent of the total forensic time, down from close to 100 percent in 1975.
Q. Let me see if I understood that. You spend about 40 percent of your forensic time on half of the population you see? Or -- I think I lost you. There was percentages of percentages.
A. No, that's true. I spend about 40 percent of the forensic time on individuals who are involved in the criminal justice system.
Q. Okay.
A. There are approximately the same number of individuals involved in the criminal justice system as are involved in civil issues of one sort or another.
Q. Okay. It takes less time per individual typically in the criminal aspect than it would in the civil aspect?

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Is that --
A. I think the most accurate thing to say would be that there are some civil cases that consume an enormous amount of time, and those are a minority of the civil cases, and they are a very small minority of the total cases, but that's what skews the answer.
Q. Do you have any listing, either with you or elsewhere, of the civil cases that you have consulted on?

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A. The -- what's available is not of consultations.
Q. What is it available of?
A. My testimony. It's the list that's required by the federal court.
Q. And is that a list that's readily available?
A. It's readily available, I think as long as you understand the requirements are going back only about four years, but it would give you the cases in the last four years and would give you a smattering of cases before that when we first started trying to do it.
Q. When it was something of a substantial length of time, it might appear on that list even if it was four years?
A. Yes.
Q. Older than four years, rather?
MS. CHABER: Counsel, would you agree to produce that list?
MR. BARRON: I'll agree to consider producing it. And I should say, if you feel a list like that is important or anything else with the witnesses, if you could follow up with something in writing, just because it's difficult for me to keep track of things like this I've found historically over the years. I'm sure you'd agree.
MS. CHABER: Q. What percentage of the time that you spend in civil forensic work is spent -- strike that.

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What are the different categories of work that you would do in civil forensic work? For example, do you do independent medical examinations? Do you do examinations at the behest of one side or the other? That's what my question was directed toward.
A. I'll do evaluations at the request of the defense in what are probably categorized as ordinary, everyday personal injury litigation.
I do the same at the request of the plaintiffs in similar kinds of situations.
I would sometimes do it as an agreed-upon examiner.
I do evaluations of -- in wrongful death cases, usually where there is a will dispute or where there is a question as to whether the death was a homicide, a suicide, or an accident.
Q. For insurance purposes as opposed to for the criminal case?
A. I think that is perhaps the majority of them. The problem is that a lot of what happens I don't have control over, and there are other times where a coroner has already made a preliminary judgment as to what he or she thinks happened, and they're coming around for some other reason. But I think insurance is probably the most frequent. Some of those are in a malpractice context, and malpractice would

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be another area, both for the plaintiff and for the defense.
Q. And when you say malpractice, malpractice of

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another person in the health profession, the mental health profession?
A. Yes, at some level.
There would also be in this area a consultation to the Attorney General's Office. And that would usually be in cases where an action taken by a licensing board against an individual in health of some sort has been handed over to the Attorney General's Office for prosecution, and I would serve as the consultant or witness for the Attorney General's Office and then occasionally for the individual whose license is threatened or where there's an attempt to do something with it.
I'll do child custody evaluations almost always on court appointment, or a few times as an agreed-upon evaluator.
I will do fitness for work or fitness for duty evaluations. Fitness for work evaluations are usually of one party after a divorce action who says that he or she is disabled or impaired in their ability to work. The fitness for duty evaluations are more commonly at the request of an employer. And the ones that I do more commonly involve a threat or a worry about a threat of violence.
And I'll also do evaluations that are pretty much

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a potpourri of things for superior courts, either in San Mateo County or Santa Clara County, sometimes in Santa Cruz County. And in a civil area would usually be a fitness of an individual to testify, sometimes a fitness of an individual to serve as his or her own attorney. I think that's it, as far as I can remember.
Q. Okay. In terms of the personal injury litigation that you discussed, can you give me an idea of the breakdown of plaintiff versus defendant?
A. I believe it is somewhat more at the request of the defense, perhaps about 55 percent. There may be periods of time where it gets as high as 60 percent, but I don't think it gets much beyond that. And there may be times, again, where I've got more requests for plaintiff evaluations. But those are a minority of the time.
Q. And in the malpractice cases, can you give me the breakdown of defendant and plaintiff?
A. If I were to exclude the Attorney General's evaluations, it would be about the same in the malpractice cases, somewhat more at the request of the defense.
Q. About 55 to 60 percent?
A. Probably a harder 60 percent.
Q. And while we're on the subject of that, what is your hourly rate for deposition?
A. $300 an hour.

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Q. And is it the same for consultation on legal matters?
A. No. Ordinarily, it would -- well, it would depend again on whom I'm dealing with.
Ordinarily, what I would charge is $200 an hour for the non-testimony time and $300 an hour for the testimony time.
Q. So they're getting a better bargain than I am?
A. Not at all. I'd never give them a better bargain than I would you.
Q. You're charging them 200 an hour, aren't you?
A. For the non-testimony time.
Q. Correct. How much time have you spent to date up

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to the start of this deposition on Ms. Henley's case?
A. I would estimate about 75 hours altogether.
Q. And does that time include meeting with attorneys?
A. Yes.
Q. And is all that time charged at 200 an hour?
A. Yes.
Q. And how much of the 75 hours to date would you say has been in meeting with or speaking with attorneys?
A. Probably a total of about 10 hours.
Q. Have you ever worked with any of the lawyers involved in the Henley case before?
A. I don't know about the Henley case such as I don't

00030

know aside from the attorneys here, the woman. I had worked with Pat Sirridge before.
Q. And when was that?
A. I think it was in the early 1990s.
Q. And what was involved in that?
A. It was an evaluation of documents and talking to him about some articles. It was in connection with a case that he was defending that involved a cigarette use.
Q. And do you know if this was a case that had been filed as a lawsuit?
A. I'm certain it was filed as a lawsuit.
Q. Do you know the name of it?
A. No, I don't.
Q. Do you know where it was pending?
A. It was in California, but beyond that, I don't know.
Q. And what types of documents were you asked to evaluate?
A. I know there were a lot of medical records. I believe there were deposition transcripts. And then there were a stack of articles.
Q. And were these articles that he provided to you?
A. Yes. For the most part, I think they were.
Q. And what was it that you were being asked to do with respect to the defense of a cigarette use case?

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A. Well, I don't remember exactly, although I know it was close to the kinds of things that I mentioned to you earlier that I had consulted with them on for this case.
Q. Okay. And were you deposed in that case?
A. I don't think I was.
Q. And I take it you didn't testify?
A. Well, if I wasn't deposed -- oh, you mean at a trial?
Q. Yes.
A. No, I don't remember testifying either in a deposition or at a trial.
Q. Do you know any of the names of any other lawyers who were involved in this cigarette use case besides Pat Sirridge?
A. No.
Q. Do you know who the plaintiff's counsel was in that case?
A. No.
Q. Do you know what county or portion of California it was pending?
A. My belief is it was the Bay Area. I don't know that I could be more specific than that.
Q. Do you believe that this is a case that would show up on the list that you've described previously?

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A. I don't think it would, because I don't remember
00032
giving any testimony in that case. And the list you asked me about or that I told you about had to do just with testimony.
Q. Do you recall rendering a report in that case?
A. I'm almost certain I did not.
Q. And do you know who Mr. Sirridge's client was?
A. No.
Q. Do you believe it was a cigarette manufacturer?
A. Well, if there was one client, I believe that at least one of the clients would have been a cigarette manufacturer, but I don't know whether there was just one -- whether there was one or more than one. I believe one would have been a cigarette manufacturer.
MR. BARRON: Is this a good time for a break?
MS. CHABER: Yes. I was just going to say.
(Brief recess in proceedings - 10:29 to 10:55 am.)
MR. BARRON: Off the record for a moment.
(Discussion off the record.)
MS. CHABER: Q. Dr. Missett --
MR. BARRON: Mr. Reporter, just a minute, please. Could I --
MS. CHABER: You're wasting time, Counsel. Do you want to put on the record, you can figure out from the time and you can complain about it later. Let's get on with the depo.
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MR. BARRON: I haven't even finished two words. Let me please put something on the record. Could I know what time it is now, Mr. Reporter?
THE REPORTER: I have 10:56.
MR. BARRON: And I asked the reporter earlier when we had gone on break what his clock was. We went off at 10:29 and it was 10:47. Now, I just wanted it to be clear that we offered to produce Dr. Missett earlier than the time that was set this morning in order that he might be completed today. We've offered to have him come back to interrupt for Dr. Finegold. You've been informed that he has to leave, Dr. Missett, by a certain hour today because of other commitments.
MS. CHABER: Now, that I was never informed, Counsel. That's the first I'm being informed that. I was told that he had no other day he was available because he was going out of the country to New Zealand, but nobody gave me an end time on this deposition, Counsel. It was to resume when Dr. Finegold was done. And now because you feel you need to put a speech on the record, you're wasting the time.
MR. BARRON: It's not true. I did it yesterday, and there were many people there to observe it.
MS. CHABER: Well, Counsel, if you said it I didn't hear you. And it was the first I knew of it or I
00034
wouldn't have scheduled this deposition today. Dr. Finegold's deposition was scheduled first.
Q. Before the break, Dr. Missett, we were discussing the amount per hour for deposition testimony. And I would like to give you this check for $600 to represent the first two hours.
A. Thank you.
Q. Now, with respect to the civil cases that you have testified for the defense in personal injury, do you recall

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the names of any of those cases?
A. Oh, I know there's an enormous number. I don't know why I'm drawing a blank, but there are a lot of them. And maybe if you give me a minute or two and come back to it, it will probably be a better use of your time.
Q. Okay. And the list that we had talked about where you had testimony within the last four years, would some of those appear on that list?
A. Well, the ones I remember I am certain would all be within the last four years, so if it's a question of my memory, the list is going to be better than my memory.
Q. Okay. And do you recall any of the cases which you testified for the plaintiffs in a personal injury matter?
A. Yes. Fox versus Good Samaritan Hospital.
Another woman whose last name began with a P

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versus Good Samaritan Hospital.
Another was a man whose last name began with an H against O'Connor Hospital.
Another was a man whose name began with an M against the City of Palo Alto and 13 doctors.
Q. The ones that you're giving me the names or partial names of all fall into the category of the malpractice type cases?
A. Those all do. The City of Palo Alto one was a wrongful or negligent supervision case for them and a malpractice for the doctors.
Q. In terms of any of -- I think you described it as run of the mill personal injury litigation, can you recall the names of any for either the plaintiff or the defendant?
A. One was Fisher or Frazier versus Alameda County. I don't know that that really falls under personal injury, either. It was sort of a negligent informing on an adoption.
And this is where I've testified, not just done evaluations, is what you're asking?
Q. Correct.
A. All the ones I'm thinking about fall into other categories. Wrongful discharge, sexual harassment, that kind of thing. I don't remember any, but I think you'll see them when you see the list, if you do.

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Q. Okay. And you have no problem with supplying that list?
A. Well, I don't think that's mine to do, from what I understood your agreements.
Q. Do you have any concerns about supplying this list from any standpoint of privacy or otherwise?
A. I don't have any concerns that if I'm willing to give it to a federal court, I'm certainly willing to give it to officers of the court.
Q. This is a public document, in other words? Or available at least to the court publicly?
A. It's available at least to the court.
MS. CHABER: I've given the court reporter copies of documents you've provided. The first is your CV. That would be Plaintiff's 1.
Q. Is that current and up to date? It's the same as what I gave back.
A. I've given one or two talks or classes since then, and I don't think that the deputy chief position is on there. But other than that, it should be current.

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Q. And I've been provided with a list of articles, this is 10 pages long. Can you describe for me what this list is?
A. I don't know that I can do much more than what was represented to me, in that that was -- that this constitutes

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a list of the articles and reports and documents that were provided me and which I read with respect to their having retained me in this case.
MR. BARRON: Just for accuracy purposes, I didn't look through that list. I didn't create the list. Our office created it. It's my understanding that there was an attempt to list articles. I'm not sure we've listed medical records or other things provided. That wasn't, I think, the purpose of it. But I may be mistaken. You can look through it and determine for yourself.
MS. CHABER: We'll mark this as Plaintiff's Exhibit 2.
Q. Who created this list, Doctor?
A. I don't know.
Q. What were you told that this list was?
A. I was told that I would have a choice of bringing up the records or not that I had looked at. And these are the articles. And they said that they would be providing you with a list of all the things they had provided me. I expect that that's the list.
Q. This list reflects articles that were provided to you by the lawyers in this case representing Philip Morris? Is that correct?
A. Well, that's my understanding of what it is. I haven't gone through that list and checked it, so I can't

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tell you. So I can't tell you much more than that. I had not seen the list until you provided it to me just now.
MS. CHABER: We've marked that as Plaintiff's 2, and I will note that it was provided to me by counsel.
Q. Were you provided articles for you to review in forming your expert opinions in this case?
A. I was provided articles to review. I don't know that -- I don't know what was going on in their mind in terms of whether they were giving it to me for the purpose of my forming my opinion or not, but I was given articles to review.
Q. When were you given these articles?
A. I think on perhaps two or three occasions, going back probably six weeks, maybe longer than that.
Q. Who put the articles together for you?
A. I do not know.
Q. Do you know if the person had any medical training?
A. I don't know.
Q. Do you know if the person had any psychiatric training?
A. I don't know.
Q. Were these articles that you specifically asked someone to get you copies of?
A. No, I did not specifically ask either for those

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articles or for articles period. But they asked if I was interested in looking at some articles, and I said certainly I was.
Q. Did you yourself do any review or research for any articles on your own?

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A. For this case?
Q. For this case.
A. No. Aside from what was provided.
Q. On your own as opposed to what was provided to you by the attorneys.
A. Not for this case, no.
Q. And when was the first time you were contacted in this case?
A. I think it -- it would have been a substantial number of months ago, because a phone call from Mr. Sirridge with respect to whether I was willing to look at material in a case I presume now was in relationship to this case.
Q. When was the first time that you were transmitted either orally or in any other form specific information about this case?
A. About two or three months ago.
Q. And what were you provided?
A. I don't know that I could break it down for you as to what I got at what point in time, because I've had about four or five transmissions of material.

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I believe that the first items that I got were at least one or two volumes of Mrs. Henley's deposition, maybe the third volume. But I know there was enough to get started on. And that was accompanied -- either the first or the second time, it was accompanied by videotapes. And I only had one transmission of videotapes, so that the videotapes would have had to have come with the last of whatever transcripts I had of her deposition.
Q. And what were you provided with -- what else were you provided with?
A. I had a copy of eventually the deposition of Star Tomlinson, the deposition of Mrs. Belding, the deposition of Mr. Reyes, the three volumes of Mrs. Henley's deposition, the videotapes, and Mrs. Henley's medical records, together with the articles that you have there.
Q. Were there any letters that accompanied any of these transmissions of material?
A. There may have been.
Q. Do you have those with you?
A. I don't see any here. And I don't independently remember seeing one with their letterhead on it, so again, there may have been. I can't tell you that there weren't, but I don't remember seeing one.
Q. When did you prepare the deposition summaries that have been presented to me by counsel?

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A. Starting shortly after the material came to the office.
Q. Has this been an ongoing project? Or did you sit down at one time and begin making these summaries?
A. No, it's been ongoing, starting shortly after I got the material.
Q. And the first materials you would have gotten were the plaintiff's depositions?
A. I believe they were.
Q. And can you tell me when your deposition summary of the plaintiff was available?
A. As I'm providing it to you now?
Q. At all.
A. Well, the material you have there now, within the last week or so.
Q. And did you type these?

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A. The last copy I did. The first copy I didn't, I had it typed by people in my office.
Q. Did you dictate?
A. No.
Q. Did you write notes?
A. No.
Q. How -- did you sit down at a typewriter yourself and type them?
A. Those -- the final copy, I did. The final copy I

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edited.
Q. How did we get to the final copy, is what I'm trying to get to, without spending a whole lot of time to it?
A. What do I do to produce the summaries?
Q. Yes.
A. Okay. What I do is I have at first an individual in my office sit down and go through the transcript and summarize the transcript as a story, basically as if it is the individual saying what went on with him or her.
I then take that material. It's on a computer disk. If I have only a written transcript, I will take a cup of coffee in my right hand, a computer in front of me, and the transcript on the left, and I will read what they have summarized, read what's in the transcript, drink my coffee and just edit what's in the summary so that the final product is mine and at the same time I've read the material.
This was different in that there were videotapes available at the same time, so all I did was next to the computer is a television VCR. I just turn on the television VCR, put in the tape, in this case, put the transcript on my right hand, a cup of coffee in my left and do exactly the same thing.
Q. Who is the person in your office that does the summaries?

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A. I have about six or eight different people. I wouldn't know offhand who did these particular ones, in that I'm really not interested in it as long as I'm able to -- I have a set of criteria as to the way I want it done. As long as that's met, I never bother to ask.
Q. Can you give me the names of the individuals in your office?
A. I can give you the individuals --
Q. -- who might have been the ones to have done this? In other words, if somebody showed up yesterday and these were done a month ago, it's unlikely they were the person who did it. If there are people who you feel you can eliminate from the list, that would be fine.
A. Kirstin Mone would be one. M-O-N-E.
Cindy Goldwraithe, I believe is her last name, G-O-L-D-W-R-A-I-T-H-E.
Stephanie Simpson. That's probably three of the six or so. There's probably eight who do them totally, or a total number.
Q. But you think these are likely the three who --
A. No. Those are -- those are three of the names that I can give you. At least offhand I can't remember who the others might be.
Q. What is the background of these people who do the summaries?

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A. I don't know that I could tell you. I know that

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Kirstin Mone is a graduate of UC Davis, she's starting a graduate program at San Jose State for a master's in education to teach.

Stephanie Simpson I believe has been through that program. I know she's a San Jose State graduate.

I don't know about Cindy offhand. And unless I could remember the others, I couldn't tell you those, either.

Q. Are these people who do work for you other than summarizing materials such as depositions?

A. No, that's all that they do.

Q. And I take it these people do not do work for you as part of your private practice?

A. Not those, no.

Q. And when was the last of these deposition summaries completed?

A. Saturday night or Sunday morning.

Q. Have you written any kind of report or set forth your opinion in any written form?

A. No.

Q. Do you have a general practice when you are doing work for either plaintiffs or defendants in personal injury matters about putting a report into written form?

A. Well, I think the only general practice is that if

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I'm asked to write a report I will usually write a report.

Q. And were you asked not to write a report in this case?

A. No.

Q. And I take it you weren't asked to write a report in this case?

A. I was not asked to write a report, either.

Q. When did you first transmit your opinion to any of the lawyers in this case?

A. I would estimate about six or eight weeks ago. Sometime after I had looked at the initial material that I got, which I think has to do with Mrs. Henley.

Q. Would that only be the deposition? Or would that be the deposition and the medical records?

A. I think the medical records came either with the transcribed depositions or with the videotape. So by the time I was talking to them, I think it would have been both.

Q. And what was the form of your transmitting your opinions six to eight weeks ago?

A. I think there were one or two attorneys who came to the office, and we talked maybe for an hour, an hour and a half.

Q. Do you know the names of any of those attorneys?

A. Only Pat Sirridge.

Q. Do you know the law firm?

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A. Only Pat's. That was the only one.

Q. Did you understand there to be one defendant or more than one defendant?

A. I believe the first time they came there was more than one defendant.

Q. And what do you understand at this point?

A. There are many fewer. I don't know if it's just one, but that there are fewer.

Q. And do you know who Mr. Sirridge represents?

A. The exact name, no, I don't.

Q. You do know that the defendant in this case or defendants are cigarette manufacturers, correct?

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A. I know they were amongst the defendants. I don't know that they are the only defendants, because, again, as I told you, I don't know how many there are right now.
Q. But you understood the work that you were doing for Mr. Sirridge was on behalf of a cigarette manufacturer, correct?
A. I understood I was being asked to look at the material and talk to them by attorneys who were representing cigarette companies.
Q. And the other time that you indicated earlier that you had worked with Mr. Sirridge, he was likewise representing a cigarette manufacturer, correct?
A. I believe he was, yes.

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Q. And have there been any other times where you have been asked to do work by cigarette manufacturers or their attorneys?
A. My memory is yes.
Q. And when and what?
A. My memory is that I was asked to look at some material with respect to a case in Louisiana.
Q. And when was that?
A. Well, again, if I was, it wasn't much material and it would have been six or eight years ago. That's my estimate.
Q. Do you have any recollection of the name?
A. No, I don't. And the one other that I do remember would have been looking at some material, and again, I believe it was just a little bit with respect to Rose Cippolone in New Jersey.
Q. Did you testify in that case?
A. No.
Q. Were you deposed in that case?
A. No.
Q. And the case in Louisiana, does Horton sound familiar?
A. Well, the name is familiar, but I don't know whether that's because I looked at material or not. It was not much work.

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Q. And I take it you weren't deposed or testified in that case in Louisiana?
A. Whatever the case was, I was not deposed nor did I testify in court.
Q. And do you know what kind of material you were given?
A. I do not, no.
Q. Were you provided with any articles similar to what you've been provided with here?
A. With respect to the Louisiana case?
Q. Or Cippolone?
A. I was provided with articles at some previous point in time, but I don't know which of the cases I was provided the articles with respect to.
Q. And do you know which articles or whether those appear on the list of articles that were provided to you in this case?
A. I don't know what the articles were. I do know that some of them were reproduced in the articles in this case that I got.
Q. And do you have any recollection of which ones they are?
A. No. It's only that I -- I know that I read some

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of these articles before, and I don't remember or believe that I read them in a magazine, so I'm presuming I saw them

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with respect to some kind of cigarette-related litigation.

Q. Have you ever given testimony before any government agency or body with respect to cigarettes?

A. No.

Q. Have you ever been asked to give testimony before any government agency or body with respect to cigarettes?

A. No. That's aside from court? We're not talking about -- we're talking about legislative bodies rather than judicial bodies?

Q. Correct. And have you been asked to give testimony before in court with respect to cigarettes?

A. Not before this case.

Q. Have you ever been contacted by anyone from the Tobacco Institute?

A. Not that I'm aware of.

Q. Have you in any capacity ever received funds from any cigarette manufacturer other than as payment in litigation such as we're here today?

A. I think I did.

Q. And when was that?

A. I don't remember exactly, but my memory is that a tobacco company was the defendant in a case on which I did an evaluation, and it was a different kind of lawsuit. Sexual harassment, wrongful termination or something like that. And because my memory is I did see a check or

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something that would have indicated a payment, but it didn't have anything directly to do with cigarettes, it had to do with businesses of some sort.

Q. Do you remember what tobacco company?

A. No. I only remember that I was surprised when I saw it, and I don't think I had known up until that time that it was a cigarette company. But it was a company that I expect people would recognize the name of.

Q. Have you ever smoked?

A. No. You mean on a regular basis, aside from --

Q. Have you ever smoked?

A. I think I may have totaled three cigarettes or two cigarettes in the course of my entire life, and as much of a cigar as you can get through before you get sick to your stomach and feel nauseous.

Q. Have you ever lived with a smoker?

A. Yes.

Q. For how long?

A. Probably 18 years.

Q. Is that a family member?

A. Yes.

Q. A parent?

A. Both parents smoked for varying periods of time.

Q. Is that who you were referring to?

A. That's who I was referring to.

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Q. And did you ever attempt to get your parents to stop smoking?

MR. BARRON: Hold your answer for a minute.

I don't have any problem with these questions, although you raised the issue of privacy yesterday in the deposition of Dr. Horn.

If you can represent to me that you're not going to raise privacy issues with your witnesses in this direct

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line of questioning, so we have the same equal discovery, I would like to hear that now.

If you are going to raise privacy objections, then I would raise privacy objections also, and then we ought to agree whether we're going to have the people not testify or testify over the privacy objections. It seems to me that's a fair way of approaching it.

MS. CHABER: As I recall, I didn't raise them on these questions. And I'm asking him the same questions that I allowed Dr. Horn to answer. Dr. Horn who was testifying as a pulmonologist. This gentleman is testifying on a different aspect, and you could have asked Benowitz. In fact, I think you did ask Dr. Benowitz.

MR. BARRON: Just so we're clear, I think I understand what you're saying. You're saying the line of questioning you're going to engage in you feel is a fair line of questioning and does not invade rights of privacy so

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that your witnesses also will be amenable to giving answers to the same line of questioning.

MS. CHABER: If they are being offered on questions of dependence and/or addiction or lack thereof, I think it is fair game. If they are experts in other areas, make your objections when it comes up in your depositions and I will make my objections when it comes up in mine. I don't think I can make some deal across the board.

When I objected in Dr. Horn's deposition, I thought you had gone beyond the realm and he was not being offered with respect to dependence or addiction issues.

Q. Did you ever attempt to get either of your parents to stop smoking?

A. No.

Q. Did they ever attempt to stop smoking?

A. Yes.

Q. And were they successful in their attempt?

A. Yes.

Q. On the very first try?

A. I believe my mother was. I think my father was, but I don't -- it's not quite as strong as the belief I have with respect to my mother.

I'm sorry, my mother-in-law also was a smoker and lived with us for four months.

Q. And did you ever attempt to get her to quit

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smoking?

A. No.

Q. Did she ever quit smoking?

A. No.

Q. Did she ever try to quit smoking?

A. I don't know.

Q. Do any of your patients in your private practice smoke?

A. Yes.

Q. Do you counsel them not to smoke?

A. It depends on the person and on the situation.

The answer is yes, but there's such a wide range of practice that it's -- it goes all the way from hardly at all with some to much more so with others. It depends on the person.

Q. Have you ever worked with any of your private patients specifically on efforts to quit smoking?

A. Yes.

Q. How many?

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A. I think it averages, as I had said earlier, about one or two a year.
Q. Have any of the individuals, the one or two a year that you have made efforts to help quit smoking, had any difficulty doing so?
A. Yes.

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Q. Are there any who have quit and then resumed smoking again?
A. Yes.
Q. Do you ever prescribe any type of medication for individuals who are attempting to quit smoking?
A. Yes.
Q. What do you prescribe?
A. Well, again, it depends on the individual in that the medications I prescribe may not be necessarily for the smoking, because the majority of the people that I see who have a difficulty with smoking also have another psychiatric problem, whether it's depression or schizophrenia or manic depression, they have something for which they will get medication. Treating the other condition sometimes makes a difference for the extent to which they smoke. Sometimes it doesn't. Sometimes I will prescribe medicine directly for the smoking. So it's a wide range of practices.
Q. And when you prescribe medicine directly for the smoking, what medications do you prescribe?
A. Well, right now, the principal one is Wellbutrin.
Q. Zyban is the trade name?
A. Well, Wellbutrin is the trade -- the brand name. Buperion is the generic name for it. Or buproprion.
It has differed in the past. Probably anti-depressants were the most frequent. Usually

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tricyclics. Nicotine patches. Nicorette gum. I'm sorry, do you want me to keep going?
Q. Yes.
A. Everything? That's -- those are the things that occur to me right now. I can say that the practice has changed every three or four years; that what I would do has changed a bit because I think four years ago I wasn't prescribing Wellbutrin for anything. Four years before that, I wasn't prescribing Nicorette gum. So as you go further back the practice changes.
Q. Have you ever prescribed a nasal spray, a nicotine nasal spray?
A. No, I haven't.
MR. BARRON: I saw you looking at the watch. I guess we're at about 11:30. I don't know what the court reporter has for the time.
MS. CHABER: I have 11:30. I just want to get a couple more questions in and then we can stop.
MR. BARRON: That's fine.
MS. CHABER: Q. Dr. Missett, can you tell me what your opinions are in respect to the Patricia Henley case?
MR. BARRON: Well, I'm going to object to that as calling for a narrative. I have no problem with him giving an overall general summary of the opinion or opinions, if we recognize that there are a lot of other opinions that are a

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part of that. Just so that we're clear on what he's going to be doing.
MS. CHABER: Q. Can you do that?
MR. BARRON: And then I suspect, well, we have a

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court reporter waiting --
MS. CHABER: Right.
MR. BARRON: And we have a time limit with various things that we've talked about, we ought to get that and come back after Dr. Finegold.
MS. CHABER: I understand.
Q. Can I get you to answer the question, please, Doctor?
A. I can, although it's going to eat substantially into whatever time requirements you've got. I don't mind telling you, but I have to ask you if this is where you want to go right now.
MS. BARRON: Well, let's --
MS. CHABER: Q. I want -- can you give me -- can you summarize your opinions in this case with respect to Patricia Henley?
A. Well, I think I can very briefly, yes.
That Mrs. Henley's smoking behavior appears to have resulted from a lot of different influences in her life and from the behavior and example of a lot of different people around her; and that it -- it provided her with

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certainly some social benefits over a period of time.
And the indications are that she had at all times the ability to be aware that there were certain risks associated with smoking, but that she is a woman who is described as -- variously as strong and as very much of her own mind and as somebody not to be easily or lightly diverted from a path on which she's set herself; that she does appear to have weighed risks and benefits with respect to any number of issues in her life prior to her having done that with respect to cigarette smoking in late 1997.
And the indications are that whereas she would appear to have been at least mildly dependent on cigarettes, cigarette smoking, I found no indications whatsoever that she was addicted to cigarette smoking.
Q. And the distinction that you're making between mildly dependent and addictive is a continuum, is it not?
A. Well, I think as long as you understand that each person is different, I do believe you could take individuals and place them within a certain range somewhere along what I think you could regard as a continuum.
Where you pass from the word "dependence" into "addiction" may at times be difficult to determine, but I think that in general, I could see it being regarded generally as a continuum. I could see others as saying just as legitimately no, there's a discontinuous aspect here.

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But I have no problems with it being regarded as a continuum.
MS. CHABER: With that, I'll just have the court reporter mark the deposition summaries. If we can mark them in the order that I'm presenting them to the court reporter, we can come back when we read into the record what got marked as what. If you would mark each one as a separate exhibit.
MR. BARRON: And also, I would like to meet and confer with you briefly with the hope that we don't have any difficulty, you and I, because I would like to be able to work these schedules out.
Let me try to refresh your recollection about what we talked about yesterday and where we are.
Yesterday I did --

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MS. CHABER: Do you want me to do this without the benefit -- this isn't on the record?
MR. BARRON: It is on the record because I think I can refresh your recollection, Counsel. And I know you've got a lot of things to be taken care of in a case like this, but I did mention to you some additional news I had received from the Doctor which was that there was a possibility that he could even be subpoenaed for a case today that would cause us to have to interrupt the testimony, although he thought that was unlikely.

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MS. CHABER: I do recall that. Has that happened, Counsel?
MR. BARRON: No. I haven't suggested that it's happened.
MS. CHABER: Okay.
MR. BARRON: I also, though, mentioned to you that he had to be out of here by 4:30, because he had to do some things with another case that involved potential testimony the following morning.
I then said something very close to "you might want to re-evaluate my previous offer to come earlier in the morning to commence his deposition," and you said "I can't re-evaluate that, re-evaluate coming earlier because I have obligations for my child" which, of course, I accepted and do accept that statement about your belief.
He will now go and wait for the time when Dr. Finegold's deposition is completed, and then we will call him and he will come back as soon as we make that call, whenever Dr. Finegold's deposition is finished.
I will also ask him to evaluate his situation. If he's able to stay longer than 4:30 because something has changed, we will notify you of that and let you take more than we originally thought we had agreed upon for the time he would have available today. If he cannot change that obligation, he's going to have to leave at 4:30.

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I also want to memorialize the fact that we had talked about the fact he is out of the country, you had a schedule to be out most of next week. We have limited time available, and really, there is no time that I can see in either of the calendars to do anything more with him in the way of a deposition, since he is not returning to the country until I think late in the evening on January 2nd. Whether the Court would want us to continue deposition time during trial is a matter we need not really get to now, but I just wanted to make sure that we have a clear understanding of the schedules and what I thought we talked about yesterday.
MS. CHABER: Well --
MR. BARRON: I hope that refreshed your recollection.
MS. CHABER: I do recall you talking about him getting subpoenaed. I do not remember that I agreed that it was okay that he left at 4:30 and that you not provide an additional time if the deposition is not completed.
It was Mr. Ohlemeyer who wanted Dr. Finegold's deposition to begin at this time. This deposition got set subsequent to that. Dr. Finegold is here. Dr. Finegold is prepared to be here and he's prepared to be here late into the evening. So if you want to continue Dr. Missett's deposition, we can do that and we can take Dr. Finegold when

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it's concluded. But I do not find it appropriate, Counsel, that you wish to cut off my time because the Doctor may have some other trial that he now has other obligations to. I don't find that appropriate. And I also indicated that I would be happy if we did not complete this deposition today to continue it during the time of trial, whether it be on a Saturday or in an evening. And given that the Doctor is local and I was told that there would be no difficulty with scheduling him because he was a local physician and not coming from out of town, that is where that's at.

So you make the choice as to whether you want to continue this witness and we'll take Dr. Finegold who will be happy to make himself available later in the day.

MR. BARRON: I didn't say and I don't think you could have heard me say that you agreed that if he had to leave at 4:30 you would never have any more time to depose him. We did not reach an agreement on that issue, but I hope I refreshed your recollection about the scheduling situation, and I hope I refreshed your recollection -- did I, about that?

MS. CHABER: You refreshed my recollection that you told me that I better be done at 4:30 because he was leaving with other obligations.

MR. BARRON: Thank you.

MS. CHABER: And that he might be pulled out.

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MR. BARRON: Thank you.

MS. CHABER: But I do not recall, which I thought was your representation earlier, that I agreed to complete him by that time.

MR. BARRON: I didn't say that. Nor did I agree to --

MS. CHABER: And I don't know why we're wasting a record that I'm paying for to have this discussion ad infinitum. And I would propose that we end the deposition and go off, because speeches -- you make your point to a court, if it ever gets to that point where that is necessary. And speeches on the record, Counsel, I don't want to engage in that. We can spend a lot of time and a lot of money doing that.

MS. BARRON: I agree. I don't usually do that. And to answer your question, the reason I did it is because off the record when we had a discussion you had indicated what I had said to you about 4:30 I had never said, and apparently you misunderstood what I was saying. But I wanted to make clear what we did say yesterday. And now we're clear, we're okay. He's going to go back to our office and do whatever business he wants and be on stand-by to be called in after Dr. Finegold's completed. So with that --

MS. CHABER: Why don't we just continue him, since

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he has the time frame and Dr. Finegold doesn't have the time frame?

MR. OHLEMEYER: Dr. Finegold --

MS. CHABER: Dr. Finegold will be here and available into the evening.

MR. OHLEMEYER: Dr. Finegold's deposition, once it starts, will be over in two hours.

MS. CHABER: It's two hours, Bill, in the middle of somebody's deposition who now has a time constraint. So doesn't it make more sense to finish --

MR. OHLEMEYER: No.

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MS. CHABER: -- Dr. Missett and get his deposition concluded --
MR. OHLEMEYER: I'll tell you why it doesn't.
MS. CHABER: -- and you can take your two hour deposition of Dr. Finegold?
MR. OHLEMEYER: It makes no sense, because I scheduled my week around Dr. Finegold's deposition, which was scheduled at 11:30 this morning. I knew, as I told you, it would be a brief deposition. And I have irreconcilable scheduling conflicts that prevent me from doing anything but taking Dr. Finegold's deposition as it was scheduled. So I'm here at 11:30 to take Dr. Finegold's deposition, and the sooner we start it the sooner we finish it.
MR. BARRON: Okay. So that's it. We'll give you

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a call, Doctor. Thank you. Get some lunch.
(Recess in proceedings - 11:52 a.m.)
(END OF MORNING SESSION - RESUMED ON NEXT PAGE)

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DEPOSITION OF DR. JAMES MISSETT (RESUMED) - 2:51 pm.
(Mr. Ohlemeyer no longer present.)
(Exhibits 3 through 8 marked.)
MS. CHABER: We're back on the record. And I think we were marking some exhibits that you provided.
Exhibit No. 3 is Volume I of Patricia Henley's deposition.
Exhibit 4 is Volume II of her deposition.
Exhibit 5 doesn't have a volume number, but is that Volume III?
A. It would be III, from pages 476 to 775.
Q. Exhibit No. 6 is a summary of the deposition of Jose Reyes.
Exhibit No. 7 is the deposition of Penny Belding.
And Exhibit No. 8 is the deposition of Star Tomlinson.
Are those all of the materials that constitute your file in this case?
A. Well, I mentioned before that I had other materials.
Q. Articles?
A. But you're asking what I produced? My file that I

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produced?
Q. Do you have a file that pertains to this case that has either materials that you produced or materials that
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were given to you, provided to you in connection with this case?
A. Okay. Obviously, the file that I have, as I told you this morning, extends far beyond this because it includes the videotapes, the medical records, the articles and reports and documents I was given in addition to the originals of the -- or the transcripts, copies of the original transcripts.
Q. And you have not made any effort to sit down and determine whether the list that was provided to me and marked as Exhibit 2 contains all of the articles which had been provided to you? Is that correct?
A. I made no attempt to establish any correspondence at all one way or the other between the list and the materials I got.
Q. I would ask that you make available -- do you have with you the actual articles that you were given?
A. Yes, I do.
Q. Can you produce those, please?
A. Yes.
Q. Okay. Have you pulled out all of the articles that you have been provided?
A. Yes.
Q. And as you were sorting through the materials, you separated out what was depositions that you've provided
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summaries for?
A. Depositions, summaries, videotapes and the medical records and things that remain, with one exception.
Q. And what is the one exception?
A. You had asked me this morning about any communications from Shook, Hardy & Bacon.
Q. Okay. And this is a November 4th, 1998 letter. I'd liked that marked as plaintiff's next in order, which would be 9.
And I would like a copy of the articles that have been provided to you. I can either take them for copying, give them to the court reporter, whatever you choose, Counsel.
MR. BARRON: You can give them to the court reporter if you like. The court reporter is not enthusiastic about that.
MS. CHABER: Well, I mean the other choice is I can send them to Kinko's, but I don't know if you want to do that. Think about it. We can decide at the end.
In any case, I do want a copy of all of the articles that the Doctor has been provided.
Q. Doctor, in terms of this November 4th letter, does this letter reflect the first time you arranged to meet with attorneys in the Henley case?
A. I believe it reflects it only by indirection; that
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whatever request I would have made would have been made the first time I had met I believe with Mr. Sirridge.
Q. And do you know what materials are being referred to as "Attached are the remaining materials that you have requested for your review in the case"?
A. No.
Q. Were there specific materials that you asked to

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see as opposed to provided to you by counsel?
A. I think the usual form was, "Would you be interested in seeing?" And I think invariably, my answer was yes.
Q. So you don't know what reference is made in that November 4th letter?
A. No, I don't.
Q. And by the time of the November 4th letter, had you formed your opinions in this case?
A. I think I had already started to look at materials, so I was in the process of forming opinions. I don't know that some of the opinions were that fully formed until this past weekend.
Q. What specifically were you asked to do?
A. Well, in terms of what I was actually asked to do, it was to look at some materials and to talk with them about the materials. And that was all.
Q. You were given no direction about the type of case

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or the type of opinions you potentially would be asked to render?
A. They certainly talked about some aspects of the case. I don't know that there was anything, though, that they told me I would be asked about. I think that one thing that they said was they thought I would be asked about addiction and/or dependence. That part is something that I think they said it in that way. But aside from that, I don't think they ever said, "We expect that this will be something that will come up or that you will be asked about."
Q. And had you discussed previously with Mr. Sirridge what your opinions were in general about cigarettes and potential dependence or addiction?
MR. BARRON: Please hold your answer, Doctor.
I'm sorry. I think the question is ambiguous as to time frame when you say "previous." It's not clear, previous to what?
MS. CHABER: Q. You had met with Mr. Sirridge before you were asked to be involved in the Henley case, correct?
A. Well, many years ago.
Q. Had you discussed or had any conversations or in any other way made known to Mr. Sirridge your opinions with respect to cigarette smoking and its potential for either

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dependence or addiction in an individual?
A. On these earlier occasions, going back a good number of years?
Q. Before you knew anything about a Henley case.
A. I don't remember ever having done so directly.
Q. Did you do so indirectly?
A. I don't see how the discussions could have been carried out without having that issue as somewhere in the background. That's why I say the word "directly." But I don't ever remember it being a topic of discussion at any time before this.
Q. Have you yourself ever published any articles in any peer-reviewed literature with respect to cigarette smoking and its potential for dependence or addiction in an individual?
A. No.
Q. Have you published anything in something other than a peer-reviewed journal with respect to cigarette

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smoking and its potential for dependence or addiction?
A. No.
Q. Are you familiar with Neal Benowitz?
A. Only by name.
Q. And when you say by name, you've read articles that he's written?
A. I have.

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Q. And you've read Surgeon General reports where he is cited as either an editor or an author?
A. Yes.
Q. Have you ever had the occasion to meet him at any professional meetings?
A. I don't think so.
Q. Have you ever had the occasion to hear him give any lectures, speeches or such at professional meetings?
A. Not hear him.
Q. What do you mean by not hear him?
A. I've read presentations that he's made at various meetings. I have seen slides he's produced and presented at these meetings. But I didn't hear him, as such.
Q. Okay. And what would be the methodology of seeing slides that he had presented at a meeting that you were not at?
MR. BARRON: Objection as to the word "methodology" as being ambiguous in this context.
MS. CHABER: I think Dr. Missett knows what I'm asking.
THE WITNESS: No, I -- it was either two things or both. One was the Internet when I was getting ready for my board exams. And the other arena were searches that I was doing on all kinds of substances, maybe over the last two years or so, however long ago it was that I started more

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formal work for this board exam.
MS. CHABER: Q. Do you consider Dr. Neal Benowitz to be an expert in the field of addiction as it relates to addiction or dependence as it relates to cigarette smoking?
A. I think so.
Q. Do you believe that people can be addicted to cigarettes?
A. To cigarette smoking, yes.
Q. And tell me how you would define an addiction to cigarette smoking.
A. Well, you'd asked the question in terms of can it happen. I mean is it possible? It would mean or imply that the individual has a significantly heightened tolerance for the number of cigarettes that he or she is smoking, and particularly the amount of smoking that they're doing with the cigarettes. So we're not just talking here about numbers, we're talking about something else.
That they also have in this a tolerance to the physical effects of the various substances that you might be exposed to if you are smoking.
The individual would ordinarily spend a substantial amount of money if they're going to be paying for these cigarettes.
Also, you'd expect that they would have pronounced withdrawal effects either in cutting down or in stopping,

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where they would experience a significant amount of distress and interference in their daily functioning or relationships or moods.

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Once they had stopped or even cut down, they would have a marked level of difficulty in refraining from using cigarettes. They would find that they needed to enlist a substantial number of aids to keep them from going back to smoking, as long as they were refraining from it. And all of this would be stronger the closer in time you are to the actual time that they stopped.

By aids, I mean getting rid of ashtrays, getting rid of cigarettes, getting rid of or changing the circumstances under which they would smoke in the past, asking people around them not to smoke; making concerted efforts to stay away from places or individuals or situations where they know that smoking is a greater likelihood; refraining from activities, whether it is drinking or certain social situations where it's more likely to come up; joining self-help groups or other kinds of programs; asking for medical aids such as nicotine in some form other than cigarettes; finding that they need to devise alternatives to the situations where before they would smoke. In other words, you can't just say "I won't go to such and such a place." You would have to have somewhere else to go in order to assist you or help. That's all that

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occurs to me right now.

Q. And what amount of smoking does an individual have to do to qualify for an addiction?

A. Well, I don't think that the amount is the critical issue. Ordinarily, you would expect that you're going to be dealing with a greater number of cigarettes, but I don't think that means that an individual who would meet most of the criteria that I just gave you at a pack and a half a day would be said not to be addicted, because they would meet the criteria.

On the other hand, it's also possible that you could have somebody who is at a substantially greater level than that and they won't be addicted because they don't meet the criteria. It's the criteria that are important, not the amount.

Q. And when you say "the criteria," what do you mean?

A. The criteria are those --

Q. The items --

A. -- subitems to the answer I just gave you.

Q. Okay. Do you agree that people who smoke cigarettes generally smoke them to maintain a level of nicotine in their system?

A. I would agree that it's a reasonable way to look at what some people do with their smoking, to form the hypothesis that they appear to be smoking to either achieve

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or maintain a given level either of nicotine or some other substance, but I'm not going to exclude nicotine from that.

Q. Have you read any internal documents of any cigarette manufacturer as to what they have stated about cigarette smoking and addiction?

A. No, not that I'm aware of.

Q. Have you ever read any or been provided any internal correspondence or reports of anyone from the Tobacco Institute or one of the research facilities of the Tobacco Institute with respect to cigarette smoking and addiction?

A. Well, I don't know the backgrounds of all of the institutions or individuals who authored the materials that I reviewed here, nor do I know the backgrounds of the

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institutions or the people who have authored. There may be hundreds of other articles that I've read over the last several years. So the best I can say is not knowingly. Or indeed, if there is an article in here, I was not paying attention to that as such. And it may be that there is an article, and it may be also that I read one but it doesn't stand out as such.

Q. The articles that you've produced that we're going to make copies of, are those generally articles that appear in the public literature as opposed to materials that may be in private literature of someone such as the Tobacco

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Institute or a cigarette manufacturer?

A. I don't remember any non-public articles in there.

Q. Have you ever asked to see what Philip Morris or any other tobacco manufacturing company had in their internal records with respect to their belief on cigarette smoking and addiction?

A. I didn't ask to see anything at all, so that would include internal documents. But it would also include everything on this table.

Q. And to your knowledge, other than what might be contained in the stack that's on the table, you have not been provided with any internal documents or memoranda from cigarette manufacturing companies?

A. To my knowledge.

Q. Have you ever gone on the Internet and attempted to look at any of the documents that have been produced in various litigation and by Congressional committee members with respect to cigarette smoking and addiction?

A. No.

Q. Do you know Dr. Steven Raffle?

A. Yes. Oh, I know of him rather than know him.

Q. What do you know of him?

A. He's a psychiatrist in the East Bay.

Q. How do you know him?

A. Several of the cases I have had, he's been either

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a treating psychiatrist or retained expert either for the same side that retained me or for the opposing side.

Q. Have you ever had any discussions with Dr. Raffle with respect to cigarette smoking?

A. No.

Q. Have you ever seen any reports or articles written by Dr. Raffle that relate to cigarette smoking and its potential for dependence or addiction?

A. Not where I was aware of the article being written by Dr. Raffle.

Q. And in any of the cases where you've seen his name because he was either a retained expert or somehow involved in the treatment, were any of those cases cases that related to cigarette smoking?

A. I don't think any of them would be, except that I don't know whether he was retained in this case that I mentioned to you six or eight years ago, because it was, I believe, a Bay Area case. So it may have been that he was involved in that case. I wouldn't remember right now.

Q. Have you had any discussions with Dr. Raffle about any of the aspects of Ms. Henley's case?

A. No.

Q. Have you had any discussions with any of the lawyers about any of the aspects of Ms. Henley's case as it relates to Dr. Raffle?

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A. No.
Q. Do you use the DSM-IV presently in your work?
A. Yes.
Q. Do you use the DSM-IV diagnostic criteria with respect to addiction or dependence as it relates to cigarette smoking in your work?
A. DSM-IV doesn't refer to addiction to nicotine; it does refer to nicotine dependence, and I do use it.
Q. Do you have a certain number of the criteria in the DSM-IV that you require before you will opine that an individual is nicotine dependent?
A. The DSM-IV has a list of criteria, and ordinarily I'd like to see an individual either reach or come close to the number of criteria that are there.
Q. Does the DSM-IV require that each and every of the listed criteria be met in an individual in order to consider that individual nicotine dependent?
A. No, it's a -- it's proportional, I believe four out of seven, but it's not the entire number.
Q. Do you use any other scales or criteria in judging nicotine dependence?
A. As the basis for my opinion?
Q. At all in forming even a part of your opinion?
MR. BARRON: Well, I'll object to the form of the question. Vague and ambiguous. Too general.
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THE WITNESS: Well, I think the difficulty with answering your question is that there's an enormous volume of literature on the subject of dependence, on the subject of dependence and addiction, on the subject of addiction. That's in general. And on the way the term is used, there's also a very large volume of material where the terms "addiction" and "dependence" are used --
MS. CHABER: Q. Interchangeably?
A. Well, it's not clear whether it's interchangeable or not. Sometimes yes, sometimes no. And sometimes within the same article it is used differentially. And the articles are written for different purposes. Some articles are written for a purely scientific purpose, other articles are written for a more public or social or political aspect. And given the way in which the article is written, and I think if you understand something about the context in which it's written, you can understand the way they're using the words. But it doesn't mean that you can willy-nilly go back and forth between them.
Q. Are you familiar with any other tests or scales or published criteria other than the DSM-IV that is used to assess nicotine dependence in an individual?
A. I can only tell you that I've seen perhaps about a dozen, at least a dozen. I don't know, though, that I could off the top of my head tell you what they were right now. I
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know where I would go out and hunt for them, but --
Q. Where would you go out and hunt for them?
A. Probably through searches, to start with. Probably through the articles that I have at some time read myself.
Q. The articles that --
A. I have at some time read myself.
Q. Are you familiar with the Fagerstrom Nicotine Dependency Test?
A. Only that I've seen reference to it and that I've

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read articles about it, but I don't think I could tell you more about it right now than that.
Q. Have you ever used it in order to assess nicotine dependence in an individual?
A. I don't think so.
Q. Do you have any opinion as to whether or not it is a valid measure of nicotine dependence in an individual?
A. No.
MS. CHABER: Let's go off the record for a second.
(Discussion off the record.)
MS. CHABER: Q. You indicated that as a generalized -- or one of your generalized opinions, that Ms. Henley's smoking resulted from a lot of influences in her life.
A. Yes.

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Q. Could you be more specific, what you mean by that?
A. Yes.
Q. Do I have to ask the next question?
A. No, you do not.
Q. Would you be more specific?
A. No, you do not have to ask that.
MR. BARRON: Now.
THE WITNESS: She grew up in a household where her mother smoked, where her aunt smoked, where while she's still in junior high school her peers are smoking. She, when she starts smoking, has her grandfather bring her cigarettes in juvenile hall. She has her mother give her money for cigarettes in juvenile hall. She continues smoking afterwards, after coming out of juvenile hall and going on to other things, to Hawaii, to other places.
She has a number of people whom she sees, most commonly in the movies, she regards as being particularly attractive in their presentation and/or romantic in their presentation who are smoking, and she comments on some of the smoking behavior of some of these individuals as being something that she responded to in a particularly strong way.
She gives no indication that she was unable to understand the written word, whether it appeared in books or magazines or newspapers or on cigarette packages.

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She gives indications of being able, however, to make judgments about some things, such as alcohol being risky, so that she determines that she does not want to drink during the course of her pregnancy and doesn't want her daughters to drink during the course of pregnancy, but she's also fairly clear, too, that there are a number of written items to which she was exposed that she determined she was not going to pay attention to, and is clear herself that she exercised a decision in doing so and is described by at least her mother and one of her long-term relationships, Mr. Reyes, as being a strong person and not the kind of person that it was very easy to sway from a decision once she had -- had set her mind to it on anything, not just having to do with smoking.
She associated over a long period of time with individuals who smoked. The smoking was apparently a part of the social intercourse that went on amongst them.
She worked for a period of time as a waitress in a gambling place and also as a bartender, in both of which places there was apparently a substantial amount of smoking.
She doesn't give indications at the time that when

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her mother determined to stop smoking on October 1st of 1971 that she felt that that meant that she should stop; indeed, she appears to have both her mother and her stepfather stop at the same time and, aside from eating a lot of candy, not

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report any difficulty with doing so, and also have both her mother and her stepfather feel a certain amount of pride at having stopped and not returning ever to smoke again.

She continued herself to smoke and does not appear from what Mr. Reyes said to have been -- or to have made remarks about any connection between the carotid artery closing or the high blood pressure or the broken vein in his eye and smoking, you know, but it also may be that there may be reasons for that, but certainly it is not reported.

And then when she herself determines to stop smoking, it is for a readily discernible and I believe easily recognizable reasoning -- reason, namely, that she feels that there's an interference with her voice that may be potentially related to the smoking and that she wants to be a singer. She had already, however, some three years -- two or three years earlier had a bout of pneumonia where there's no particular indication that she felt at that time that she was that much more subject to lung infections as a result of her smoking, so maybe it would be a good idea for her more seriously to consider stopping.

And then when she does stop, she stops coincidentally on the same date that her mother had chosen or really had chosen for her apparently by her husband some 26 years earlier. And after she's stopped, the response that she has to stopping appears to be very similar to what

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her mother reported, which was a mild level of withdrawal symptoms that went on, and again, as her mother's did, for a period of at least several weeks and without her apparently experiencing a weight gain that her mother experienced.

And it's about two and a half months later that she has the problematic X-ray that suggests that she may have a condition of some sort in her chest that deserves more careful examination, but she continues, as did her mother, to stay off cigarettes.

She afterwards does complain about what she feels was the actions of the cigarette companies and yet there are indications that she herself knowingly exposes herself to certain risks in the course of her life.

She would appear from her testimony to be aware of her actions as carrying with them a certain level of risk.

Her comments about the other behaviors would appear to indicate that she is somebody who is able at some level cognitively to process a balancing out risks of certain situations versus the benefits, and to make a determination as to what it is that she's going to do even in the face of those risks, and she's done this in enough different areas of her life and in categories that are discrete enough that it would be amazing if with respect to cigarette smoking that was the only area in her life where her will was overborne by whatever it was she was dealing

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with there; particularly in the face of her mother's having had such a relatively mild withdrawal experience from her cigarette smoking in 1971 and Mrs. Henley reporting what appears to be an equally mild withdrawal experience in 1997.

Q. I don't want to interrupt, so --

A. Well, at least off the top of my head, I think

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I've given you the vast majority of what I would say. If there are other things, I think we'll certainly list them.

Q. Ms. Henley was 15 years old when she started smoking?

A. That's my understanding.

Q. And at the time Ms. Henley started smoking, there were no warnings on the packs of cigarettes?

A. That's my understanding, also.

Q. And at the time Ms. Henley had started smoking, there had been no Surgeon General's report released on the hazards of smoking?

A. That is my understanding.

Q. And at the time that Ms. Henley started smoking, cigarette companies were advertising on television?

A. That is my memory.

Q. And do you recall -- you're a little bit older than I am. Do you recall the different types of shows that the cigarette companies were advertising on TV?

A. Not different types, no.

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Q. In 1960 to about '63, there were three major networks on television?

A. I think so.

Q. It wasn't the vast majority of the numbers of stations that we have today?

A. No, it is not what we have today.

Q. And from the time Ms. Henley started smoking when she was 15 years old until approximately 1972 or '73, cigarettes were advertised on TV?

A. I wouldn't know the years. I do know there were advertisements at least in the late '50s or the early '60s, but I wouldn't know much beyond that.

Q. And in addition to cigarettes being advertised on TV, the smoking of cigarettes as part of programs was also occurring? Programs on TV?

A. I don't know that I could tell you that independently.

Q. Have you seen any Mike Wallace interviews from the late '50s and '60s and into the '70s where Mr. Wallace is smoking a cigarette during his interview?

A. I don't remember the dates. I do remember seeing Mr. Wallace smoking. But I wouldn't remember the dates.

Q. And have you ever seen Mary Tyler Moore or Dick Van Dyke or Desi Arnaz or Lucille Ball or Sid Caesar or any of the various other stars during this time period smoking

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cigarettes on TV?

A. I don't independently remember them as smoking. I know I saw them, but I don't remember them smoking.

Q. And one of the things that stars of television and movies, smoking as a regular part of their behavior does for individuals is it normalizes the act of smoking, does it not?

A. It may. Again, depending on the individual and who it is you're watching and the circumstance.

Q. And an individual who is particularly enamored of stars and famous people potentially would be influenced by their cigarette smoking?

A. Well, anything is possible. It's certainly possible.

Q. And in fact, in Ms. Henley's deposition, she does discuss that very fact, doesn't she?

A. She does.

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Q. And one of the things about normalizing an activity is that it takes it out of the realm of something that one should not do, correct?
A. Well, not necessarily. It may take it out, again, depending on the individual and the circumstance. It may do that.
Q. Do you know what percentage of the population smoked in the 1950s?

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A. No, not offhand.
Q. Do you know what percentage of the population smoked in the 1960s?
A. Not offhand, no.
Q. Do you know whether it was a greater percentage that smoked during those time periods than that did not smoke?
A. Well, without knowing the percentages at either end of this comparison, I wouldn't be able to offer you an opinion as to whether it was a greater or lesser extent or the same.
Q. Well, just testing.
A. I understand.
Q. Because not knowing, you could know relative --
A. Something else. You're absolutely right. I could.
Q. Yes. Now, do you believe that teenagers tend to minimize the degree of risk associated with activities?
A. Well, it depends what activities. But I think more so, yes, as a general rule.
Q. And as a general rule, activities which are designated as adult activities may hold a greater attraction for teenagers than activities designated as child activities?
A. Not necessarily. That's not true.

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Q. And why is that not true?
A. Well, I think to start with, work is an activity that's more commonly identified with adult --
MS. CHABER: That's a good --
MR. BARRON: Let's let him finish.
MS. CHABER: I was expressing that that was a good example.
MR. BARRON: You were conceding?
MS. CHABER: I would concede that one.
Q. Let's talk about activities such as alcohol, for example. Let's use alcohol as an example right now.
People under the age of majority which varies state by state are not supposed to drink alcohol. Is that your understanding?
A. Yes.
Q. And it is true, is it not, that that has been -- drinking of alcohol has been designated as an adult activity?
A. Well, I think it depends what you mean by the word "adult." I think I know what you mean, but you might want to define it.
Q. Well, what do you mean when you use the word "adult"?
A. Well, if I were answering your question using the word "adult," I would say it's an activity that has

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well-known risks associated with it where the hope and expectation of society insofar as we can articulate it is

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that the individuals have more life experience under their belt before they make a determination that they want to accept those risks and return for getting the benefits that come with it.

Q. And you have over the course of time in your practice seen evidence that teenagers make an effort to engage in activities such as drinking before they are capable of weighing those benefits and risks?

A. Well, I think, again, the problem would be the same as with the other questions. Some teenagers do. Not all do. There's a substantial number of teenagers who do not. But there are some who do.

Q. Now, Ms. Henley made some choices when she was a teenager?

A. She would appear to have, yes.

Q. And one of those choices was to get married at the age of 16?

A. That would appear to have been one of them, yes.

Q. And that marriage lasted a very short amount of time?

A. Yes.

Q. Is it your opinion that Ms. Henley was aware of all of the benefits and the risks of her decision to get

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married at the age of 16?

A. I don't know that I've ever encountered anybody who is aware of all the benefits and risks of getting married at any age.

Q. Do you believe that, as a 16-year-old, Ms. Henley was fully and capably informed such as the decision she was making to get married at that age was one of informed choice?

MR. BARRON: I'm going to object to the form of the question. It's vague and ambiguous as to the phrase that you borrowed from some informed consent language, "fully and capably" informed, as well as ambiguous in terms of informed by whom or by what.

MS. CHABER: Q. You can answer.

A. I don't have any indications that she was felt by those who were charged by the state with determining whether she was competent at the time of her marriage that it was determined by those individuals that she was incapable of proceeding with that. I realize that there are -- there are some difficulties that come along with her having falsified certain dates that would indicate her age and her maturity, but I did not see anywhere an indication that people who saw her or dealt with her or interacted with her felt she was incapable mentally of entering into marriage.

I think the problem with the word "fully" again is

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I don't know if I would even be able to say that people who have been married for a long period of time are fully cognizant of all the risks and benefits and fully able to enter into that, and there's a substantial number of whose -- the clarity of whose judgment is overborne by the intensity of their emotions that even otherwise well-adjusted people spend many years afterwards asking why they did this, whether it's for good or ill afterwards.

Q. What written word was Ms. Henley provided at the age of 15 when she began smoking cigarettes that you made a reference to there was no indication she was unable to understand the written word?

A. Well, I think that earlier statement still

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stands. There's no indication that she had any interference in her ability to understand written things.
Q. And what written things did she have the ability to review to understand the risks when she entered upon smoking at the age of 15?
A. I do not know, aside from whatever may or may not have been published in the various magazines or newspapers that her mother said that she regularly had come into the house, if they did come into the house or if they did come into the house at that age. So I think that's about all I could say with respect to that.
Q. And would that be true at the ages of 16 and 17

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and 18?
A. It would be -- well, yes. I think up through whatever time she might initially have had some opportunity to see something that may have appeared in the newspaper with regards either to a government study or to the Surgeon General's report.
Q. And do you know how much written information was in the newspapers, magazines, so forth that you're making reference to that disputed what the Surgeon General or health authorities were saying with respect to hazards of smoking?
A. No.
Q. And it's true, is it not, that people can selectively absorb information to comport with their own mindset? And I don't mean selectively as in chosen to.
A. I understand. I think that all of us do that to a greater or lesser degree in response to any number of things in the course of a given day.
Q. And you would agree that if there was twice as much material written disputing the hazards of smoking as establishing the hazards of smoking, an individual could selectively hear only the things that comported with their state of mind; that is, to continue to smoke?
MR. BARRON: Object to the form of the question as being ambiguous as well as imprecise in the use of the word

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"could have," being without definition, we're not identifying what specific measure that word is being used for, possibility versus probability versus certainty or some other gradation.
MS. CHABER: Q. Go ahead.
A. Well, the -- if I take your question as you asked it, if I buy that an individual at times is going to pay attention to or absorb or respond to only those things or principally those things which comport with some kind of preexisting thought or attitude, could that person screen out everything that did not comport with his or her preexisting attitude? Well, it would appear that they could, namely, it's possible that they could, and that their preexisting attitude would mean it would make absolutely no difference how much in the way of a quantity there was of material that is adverse to the position that they already have adopted with regards to their attitude. So in that case, it could be that a hundred or a thousand times as much information that was on one side or another would make absolutely no difference to this person.
Q. Do you believe cigarette smoking causes disease?
A. I think cigarette smoking is a factor in many physical diseases.
Q. What diseases?

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A. I think it's a factor, it plays a role in lung
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disease, many different lung diseases; cardiovascular disease, a number of different cardiovascular diseases that would include heart disease; a number of respiratory conditions; a number of infectious conditions; a number of allergic or sinus conditions. To the extent that you pursue this, some central nervous system conditions. It can also play a role in making other conditions that are not necessarily principally one of those have more deleterious side effects than you might otherwise have.
Q. What do you mean by a factor?
A. Well, a factor just means that if you look at the number of people who have a condition and you take a look at them as a group, that you will find that if you take the whole population, that you have a higher proportion of individuals, for instance, who smoke, who have clinically significant cardiovascular disease, say, at age 50 than amongst a matched population that does not smoke.
So I think it's reasonable to assume that the cigarette smoking is playing some role for this group in their having a clinically measured level of problems of a physical -- usually a physical condition as compared to the other group. And I think that's -- that part is fairly clear.
The difficulty comes when you get -- when you go beyond those kind of correlations.
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Q. Do you believe that cigarette smoking causes lung cancer?
A. I don't think it's a matter of belief. I think it's a matter of whether there are -- there is evidence that it is a direct causal factor. I think it's clear, as I said, that there are correlations. I don't think I have seen anything that convinces me that it is a direct causal factor. And I know I have never seen a mechanism postulated for it.
Well, I shouldn't say that. That's not quite true. I've seen mechanisms that are hypothesized, which would mean postulated, for it. But they're basically presented as such, namely, this is a hypothesis.
Q. Do you believe that one must know the mechanism of disease in order to establish the cause of it?
A. Well, it depends on what you mean by cause. Ordinarily, if you're going to use a disease model or a medical model, one of the things that you're going to include in that if you're going to talk about cause is the mechanism by which the condition occurs. I think if you're going to approach it scientifically, that's what you're going to say. That doesn't mean everyone's going to approach it scientifically.
Q. Do you believe that there are established scientists in the field of lung cancer who have stated that
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their opinion is that cigarette smoking causes lung cancer?
A. Oh, I know that there are established individuals in the field of pulmonary medicine who say that.
Q. Would you agree that it is the vast majority of scientists in the field of lung cancer that have said that it is their opinion that cigarette smoking causes lung cancer?
A. I don't think I have enough information to say I believe that. I don't disbelieve it, but I don't know that

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I have enough information to say that I believe it or not in terms of the numbers.

Q. And I take it you don't treat people on a clinical basis for things outside of psychiatry, correct?

A. I don't treat them for their conditions outside of psychiatry.

Q. So individuals don't come to you and say, "Doctor, what caused my lung cancer?"

A. They do not come to me for that reason.

Q. And if they did come to you, you would have to say, "I don't really know"?

MR. BARRON: Objection.

MS. CHABER: Q. Is that correct?

MR. BARRON: Objection. Calls for speculation.

MS. CHABER: Q. "Your smoking may have been a factor"?

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MR. BARRON: Again, I'm just going to object for the record that the question is so general and imprecise, I think that it calls for speculation in that it doesn't have enough predicates about what the question is and the setting and the rest of it. But if he thinks he can answer, he'll certainly do his best, I am sure.

THE WITNESS: I think if it is intended as a hypothetical, if somebody were to come to me is that something that I may say to them? I may say that or something very close to it.

MS. CHABER: Q. And when Mrs. Belding quit smoking cigarettes, she quit because her husband insisted that she quit? Is that correct?

A. I don't know about the word "insisted." My understanding is that on September 30th of 1971 her husband had noticed something about the price of cigarettes going up by 50 cents or had made a remark about the price of cigarettes going up by 50 cents and said essentially "that's it." And the next day he stopped, and she stopped with him. I don't know that that is his insisting that she stop.

Q. And you didn't see anything in the deposition to that effect?

A. I do not independently remember from those 700-something pages a statement that he insisted.

Q. And Ms. Henley did not live with either of her

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stepfather or her mother at that time, did she?

A. No.

Q. And one of the things that her mother reported is a change in personality when she quit smoking, did she not?

A. To some degree.

Q. She reported that she was irritable?

A. Yes.

Q. And she reported that she was mean, shall we say, to other humans in her -- in her life?

A. The problem is with the word mean.

Q. Mean? Yes.

A. It goes along with being irritable to people around you. I think that was essentially what she was saying.

Q. And that is one of the withdrawal symptoms of an individual who stops smoking?

A. It can be, yes. And I believe it probably was in her case.

Q. And you don't know for what length of time that condition went on, do you?

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A. Only by what she implies, that it was a matter of at least a couple to a few months, gradually getting better over that period of time.
Q. And at the time that she quit smoking in 1971, do you know whether or not all cigarette packs had warning
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labels on them?
A. No. In fact, I think part of the problem is with the word "all cigarette packs," in that I think that universe takes it outside of what the Surgeon General or the FDA could control over.
Q. Do you know whether the majority of cigarettes sold in the United States had warning labels on them?
A. It's my -- in 1971?
Q. Yes.
A. I don't know.
Q. And do you know whether or not advertising in magazines and newspapers contained warnings within those magazines and newspapers in 1971?
A. No, not in 1971, I don't know.
Q. Do you know whether or not Marlboro specifically in advertising in 1971 had warnings in their advertising?
A. No.
Q. What risks did Patricia Henley know about smoking when she started at age 15?
A. Well, it would appear that the risks that she was aware of was that there was a societal prohibition against it; that it was necessary for her to secure a false ID, whether or not she ever used it in securing the cigarettes; that at her age it was behavior that would be disapproved of; it was a behavior for which she potentially could get
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into trouble either at school or at home or on the streets.
I don't know that I saw indications that her awareness of her risk went beyond that.
Q. What were the societal prohibitions against it that you identified at age 15?
A. That at least from what she describes, it was her belief that she needed to engage in various maneuvers in order to secure cigarettes; that it was not something that she could walk into a store and say, "Hello, I am a local 15 year old and I would like to buy some cigarettes." So at least to that extent, that she was aware that she had to do things to avoid adult supervision or response.
Q. Did you see where Ms. Henley testified in her deposition that she in fact did exactly that, walked into the local supermarket where she was known and her grandfather was known when she was under age and purchased cigarettes?
A. And says she was never asked for her ID.
Q. And so you did see that?
A. I did see that.
Q. And did you also see where she indicated that not only did they know her and her grandfather, but they knew how old she was? Did you see that?
A. That's what she says.
Q. And are you aware, sir, that even today there is
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reported in the medical and scientific literature that there is sales to underage people being conducted in retail stores even today?
A. I am aware that there are reports of that, yes.
Q. Have you seen articles published in the medical or

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scientific literature to that effect, on the ease of minors obtaining cigarettes?
A. Not in the medical or scientific literature.
Q. And the societal prohibition that you believe Ms. Henley was aware of when she started smoking in age 15 was that people under age were not supposed to smoke? Correct?
A. Yes.
Q. And again, and I think I asked you this earlier, and I just want to establish, you don't know at that point in time when she started smoking what percentage of the population smoked?
A. I don't know.
Q. And when she started smoking at age 15, there were not the same type of prohibitions about smoking in public places that there are in place today in California? Correct?
A. That I do know that there were not those same prohibitions.
Q. And you did not actually see anywhere in

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Ms. Henley's deposition where she said she used a false ID to secure cigarettes, did you?
A. No, indeed, she says that she was never asked for the false ID that she had.
Q. Other than the societal prohibition against minors smoking cigarettes when she began smoking at age 15, what health risks or what other risks were you referring to that she was aware of in order to weigh the risks and benefits of smoking?
A. I didn't have an indication that she was aware of other health risks as such, certainly in any kind of way that would have made a difference for her at that point in time.
Q. Do you believe at age 16 that Ms. Henley was aware of health risks such that she could weigh the benefits and the risks of smoking cigarettes?
A. Well, I already told you that I have no indication that at any time she did not have the intellectual apparatus that would allow her to do that.
What I didn't see were indications that she was exposed one way or the other to things that would allow her to make that. In other words, either that were provided to her or that she came across. So I didn't see the external things aside from her being aware that this is something that she shouldn't do. I don't think I saw things beyond

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that.
Q. Would that be true for age 16, as well?
A. You mean aside from the kinds -- again, the kinds of things that I mentioned earlier that were in the house that she may or may not have seen. That would be true then. She doesn't specify anything, and I don't have independently any basis for saying she saw or didn't see things.
Q. And can you tell me when she started smoking at age 15 what was available to her or someone similarly situated to her that would have advised her of the risks sufficient that she could weigh the risks and benefits of smoking?
A. We're talking about external items that were available to her? I don't know what would have been available to her in any kind of practical everyday way,

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aside from the fact that she was aware that there were prohibitions against her smoking in any number of situations, that's both her personally and the group or the cohort with which she was associated. I think that was at that particular point in time about as much as there was for her in a practical way, although she may have seen any number of things, but they're not listed anywhere.

Q. I guess what I'm asking you, Doctor, is what would there have been for her to see that you think she was

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intellectually capable of having understood such that she would be able to weigh the risks and the benefits of smoking cigarettes?

A. And one of the difficulties with your question is that when an individual is a minor, they are ordinarily regarded as being unable to enter into certain kinds of agreements. And the most that you often expect the minor to be aware of is that there is a prohibition against this particular form of activity, whatever the activity is, and that there are either legal or social or physical or other kinds of prohibitions or problems that may come along with that. And the argument that is used with them is far more an argument that comes from authority.

Now, part of the difficulty that Mrs. Henley had at that age was that she had in a number of different areas of her life enormous problems with authority from any source, and she ran into situations of friction with authority from a number of different sources, so that the principal source of help that was available to her was something that at least behaviorally she rejected in a number of different and important areas of her life, and she suffered enormous consequences as a result of her rejecting whatever the suggestions or advice or prohibitions or admonitions of authority were.

The authority is to a certain extent taking the

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place of the normal adult mature weighing of consequences for and against a given course of action.

MR. BARRON: Just a second.

Not interrupting your line, I just want to let you know it's about 20 after, just to give you a heads-up since he does have to leave at 4:30, I do want you to use as you see fit --

MS. CHABER: I'm not going to complete.

MR. BARRON: -- the roughly 10 minutes that we have remaining until 4:30. Just giving you a heads-up.

You haven't agreed that you're finished. I haven't agreed that there's a particular time that he will be produced, if at all again. We'll talk about that as schedules develop, as the Court makes rulings or whatever. But I just wanted to let you know heads up that you've got about 10 minutes before he's done for the day.

MS. CHABER: And I am not completed. And I would note for the record that I was provided with a whole series of exhibits to which I have not even been able to refer that as I understood it were available prior to today and not exchanged and produced pursuant to code procedures. And I am not completed with the Doctor's testimony, but I certainly will continue. And, of course, now, Counsel, thank you, I lost my train of thought and need to go back to my last question, please.

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(Question read as follows:

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Q. I guess what I'm asking you, Doctor, is what would there have been for her to see that you think she was intellectually capable of having understood such that she would be able to weigh the risks and the benefits of smoking cigarettes?)

MS. CHABER: Q. What health risks were available? What information about health risks was available to Ms. Henley or someone similarly situated to Ms. Henley at the age of 15 in the time and place that she was in?

A. I don't think I could answer that without doing a review of the articles that were published in the various magazines and newspapers to which her mother had access and that presumably were available to her while she was living with her mother, alternatively her grandparents had, and that were presumably available to her at that time. Again, if she read them. Because you can have things that are available and that doesn't necessarily mean that they're going to be utilized.

Q. And if none of the adult authority figures in her life, whether she rejected those authority figures or not, were aware of health risks in association with smoking, then you would agree that is not information that could be passed on to her?

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MR. BARRON: Objection to the form. The question is ambiguous as to "that information."

THE WITNESS: You mean if the parents or grandparents or aunts or whoever were the adults did not know themselves, would I expect that they could pass on to her that which they did not know? Not directly.

MS. CHABER: Q. And your only information as to what was available with respect to what the risks of smoking were would be to see what was published in newspapers, magazines and so forth? Is that -- was that --

A. Well, no, you're talking here about the health risks.

Q. Yes.

A. As opposed to -- well, I also mentioned that there are any number of other risks that she clearly accepted which were not specifically physical health risks.

Q. Yes. I'm talking about physical health risks. Very quickly, what other risks did she accept? Let me see if I can summarize it.

The risk that she accepted were she could get in trouble at school, she could get in trouble at home, those kinds of risks. Is that what you were referring to that she's accepted certain risks?

A. At least with respect to smoking, that she could get in trouble with the law. Again, with respect to --

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again, just to smoking. And then any number of other risks that were pretty much contemporaneous with this that she gives pretty clear indication she was willing to accept to some extent or another.

Q. And none of those risks that we have enumerated and the ones that you're making reference to are risks related to health, are they?

MR. BARRON: Objection to the phrase that's ambiguous, "risks related to health."

THE WITNESS: We're talking here about physical health?

MS. CHABER: Q. Physical health.

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A. Some of the risks do have to do with physical health.
Q. What risks?
A. Early pregnancy.
Q. And what risk was Ms. Henley aware about early pregnancy? You mean that she could get pregnant?
A. Well, I think that's -- I mean you asked, and so I was telling you that early pregnancy is a risk, and it is a risk that behaviorally she accepted, much as behaviorally she accepted some risk associated with smoking, even though I'm certain she did not appreciate all of the risks or fully appreciate all of the risks that might be associated with that form of behavior.

00110

Q. Do you understand that Ms. Henley was already married at the time that she got pregnant?
A. I do understand she was married at an early age.
Q. Did you understand she was married at the time that she got pregnant?
A. I understand that she was married.
Q. Do you know, sir, what the -- in reference to the health risks, what health risks was she taking on with respect to smoking?
MR. BARRON: I'm going to object to the question as ambiguous. Too general as to time.
MS. CHABER: Q. You made a reference -- I'll rephrase it.
You made a reference that she had the ability to be aware of risks.
A. Yes.
Q. Specifically with respect to health risks of smoking, what risks was Ms. Henley capable of being aware of?
A. Well, she was -- we're talking about internally to her? She was capable of being aware of any of the risks to which she might see reference in her daily life.
Q. I am not asking internally to her. I am asking what risks -- you believe that if there were something out there Ms. Henley was capable of understanding it. Correct?

00111

A. That's my opinion.
Q. Okay. And I'm asking you what health risks were available that Ms. Henley could have been aware of had she been aware of these things? What were the risks?
MR. BARRON: I have to object because I know what you're trying to ask, but the question as phrased is ambiguous and unintelligible.
MS. CHABER: Q. Let's take another 15-year-old at the same time that Ms. Henley was a 15-year-old. Let's take the city of San Francisco where Ms. Henley was living at the time that she was 15 and began smoking. What health risks would that 15-year-old have available to them with respect to knowledge of health risks?
A. In 1961?
Q. In 1961?
A. I do not know.
Q. Now, when you say there's no indication that she was addicted to smoking, what are the reasons that you say that?
A. Well, I think that the principal thing starts with the reasons for her cessation and the relative mildness of the symptoms that she had in stopping; the relative lack of any kind of reference to external aids that she may have

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needed I think going back to the criteria that I went through with you earlier.

00112

I think that the -- the one thing that is indicated is that she did have a level of dependence sufficient to show some psychological and physiological withdrawal signs that were mild, relatively time limited and in my opinion came nowhere near what you would expect from someone who was addicted to cigarettes.

Q. Would you agree that at the time Ms. Henley quit smoking cigarettes she had cancer?

A. Well, I think it's likely that she did have cancer at the time that she stopped on October 1st.

Q. And in fact, she had symptoms and complaints that later were identified as the symptoms and complaints of that cancer, correct?

A. I don't know that I could go that far. She had symptoms and complaints that were similar to what you might expect.

Again, it is possible that they were related. I don't know that I could go that far as to say that the symptoms and complaints or the chronic cough were related.

Q. Ms. Henley was coughing up blood in November of 1997, was she not?

A. She was.

Q. And she had a cough?

A. She had a cough for a substantial period of time before October.

00113

Q. And this time the cough had blood flecks in it?

A. In the latter part of the year there were indications of blood, yes.

Q. And she not only didn't gain weight, she lost some 16 or 17 pounds during this time period?

A. She lost weight.

Q. A significant amount of weight, correct?

A. I think it was significant.

Q. And an amount of weight that she was not attempting to lose at that time, did she?

A. I didn't think she was attempting to lose it.

Q. So one of the criterias of the effects of cigarette cessation might be masked by the fact that Ms. Henley had cancer at the time that she quit smoking cigarettes?

A. Well, it is -- it's theoretically possible that the symptoms that she might otherwise have had were masked. On the other hand, you could also say with an equal degree of possibility that were she ill like this that the kinds of symptoms you might have expected were she actually addicted would have been intensified by the physical symptoms.

Q. Like what?

MR. BARRON: Hold on, now.

MS. CHABER: Q. What were --

MR. BARRON: Slow. Stop. Please let me finish.

00114

I've been pretty courteous to you. Let me finish. It is now past 4:30. If you have one more question or something, that's okay. We made a commitment to him to get him out at 4:30. You made it clear that your contention is you need more time, you're going to try to resume his deposition at some point, and so I see no benefit in being discourteous to him and his needs. So --

MS. CHABER: Can I follow this train with just a

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couple of questions?
THE WITNESS: Sure.
MR. BARRON: Not a train. Let me finish. You can follow up with a couple of questions.
MS. CHABER: That's what I said.
MR. BARRON: But not a whole train.
MS. CHABER: We're on a specific --
MR. BARRON: Yes.
MS. CHABER: Q. What were the things that you were talking about that her physical condition, that is, the cancer, would have intensified with respect to withdrawal if she truly was addicted?
A. Her irritability, I think that perhaps most clearly. Her degree of lassitude.
Q. What's that? I know I've heard it, but --
A. Oh, feelings of overall weakness, perhaps. Difficulty in being able to respond physically to things.

00115

Q. Anything else?
A. Malaise earlier on. In other words, the problems associated with the stopping of a substance to which an individual is dependent are most intense the closer you are to the cessation date. With Mrs. Henley, she went for a period of at least several weeks, she's into November before she's starting to feel somewhat worse, and then by December she's really gone quite a bit worse.
You have a reversal of what you'd expect as the normal pattern if, indeed, she's got some kind of addictive response. It doesn't fit.
MS. CHABER: Okay.
MR. BARRON: To be resumed. You better rush to beat the traffic, such as you can.
THE WITNESS: Okay. Thank you very much.
MS. CHABER: Here is a check. You'll need to bill me for the rest.
I would also mark the deposition notice. That will be Plaintiff's 10.
MR. BARRON: And you need to bill the rest to her with a cc. to me.
THE WITNESS: To you? Whatever.
MS. CHABER: Or through them to me. Whichever way you want to do it.
(Discussion off the record.)

00116

MR. BARRON: Back on the record. We've discussed the articles that the Doctor brought. And I'm comfortable having you, Counsel, have your office take them in hand and make copies of them as an officer of the court and return the originals to our office for transmittal to the physician. And was there any other housekeeping matter that we had?
MS. CHABER: I think I already marked the notice of the taking of deposition, and obviously, I'd like to meet and confer with you as to at what point in time we can resume this and hopefully by then we will have had an opportunity to actually look at Exhibits 3 through 8.
MR. BARRON: I'm available to meet and confer.
(Whereupon the taking of the Witness' testimony was concluded for the day at 4:40 p.m.)
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